

## EXHIBIT F

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UNITED STATES DISTRICT COURT  
 FOR THE WESTERN DISTRICT OF WASHINGTON  
 AT SEATTLE

Chintan MEHTA, *et al.*, on behalf of )  
 themselves and a class of all )  
 individuals similarly situated, )  
 )  
*Plaintiffs,* )  
 )  
 v. )  
 )  
 U.S. DEPARTMENT OF STATE, *et al.*, )  
 )  
*Defendants.* )  
 )

Case No.: 15-1543

Declaration of Cyrus Mehta

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DECLARATION OF CYRUS MEHTA

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I, Cyrus Mehta, being an adult of sound mind and body, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. My name is Cyrus D. Mehta. I am an attorney admitted in the State of New York and have been practicing in the area of US immigration law for over 24 years. I am the founder and managing attorney of Cyrus D. Mehta & Associates, PLLC, which is located at 2 Wall Street, 6<sup>th</sup> Floor, New York, NY 10005. A significant portion of my practice includes representing employers and family members in filing I-130 and I-140 immigrant visa petitions on behalf of foreign national beneficiaries, and applying for permanent residence on behalf of these foreign nationals based on cut-off dates in the Department of State's (DOS) monthly visa bulletin.

2. I co-authored a widely disseminated article with Gary Endelman (who has since become an Immigration Judge and is not participating in this Declaration) entitled *The Tyranny of Priority Dates*, dated March 25, 2010 (a version of which was published in Bender's Immigration Bulletin, April 1, 2010). Available at <http://www.ilw.com/articles/2010,0503-endelman.pdf>. This article highlighted the plight of foreign national beneficiaries of I-130 and I-140 petitions caught in the crushing backlogs in the family and employment-based preferences, and offered proposals for administrative reform consistent with the applicable provisions under

1 the Immigration and Nationality Act (INA). One of the salient proposals in *The*  
 2 *Tyranny of Priority Dates* was to establish a dual date system in the DOS's monthly  
 3 visa bulletin. This proposal was later fine tuned in a blog that I also co-authored  
 4 with Gary Endelman entitled *Do We Really Have To Wait for Godot? A Legal Basis*  
 5 *for Early Filing Of An Adjustment Of Status Application*. Available at  
 6 <http://blog.cyrusmehta.com/2014/08/do-we-really-have-to-wait-for-godot.html>. We  
 7 also proposed the dual date system in our comment to the *Visa Modernization*  
 8 *Notice of Request for Information: Immigration Policy*, published in 78 Fed. Reg.  
 9 78,458 (December 30, 2014). The comment is available at  
 10 <http://www.regulations.gov/#!documentDetail;D=USCIS-2014-0014-1179>.

13 3. The changes that were made in the October 2015 Visa Bulletin are similar in  
 14 concept with the proposals in our article, blog and comment, and therefore, I am  
 15 qualified to opine on and offer an interpretation to the October 2015 Visa Bulletin.

17 4. INA Section 245(a)(3) allows for the filing of an I-485 application for  
 18 adjustment of status when the visa is "immediately available" to the applicant. 8  
 19 C.F.R. section 245.1(g)(1) links visa availability to the DOS's monthly Visa  
 20 Bulletin. Pursuant to this regulation, an I-485 application can only be submitted "if  
 21 the preference category applicant has a priority date on the waiting list which is  
 22 earlier than the date shown in the Bulletin (or the Bulletin shows that numbers for  
 23 visa applicants in his or her category are current)." Since visa availability has been  
 24 linked to dates based on the prospect of actual issuance of a visa, it has resulted in  
 25 decade long backlogs in some preference categories.

1       5. The October 2015 Visa Bulletin announced on September 9, 2015 established  
2 two priority dates for the very first time—a filing date and a final action date. The  
3 final action date is when the beneficiary will be eligible to receive his/her green  
4 card, but the new filing date is when the beneficiary will be eligible to file an I-485  
5 application consistent with 8 C.F.R. section 245.1(g)(1), and if the beneficiary files  
6 an I-485 application, he or she will get the benefits thereof such as an Employment  
7 Authorization Document (EAD), advance parole and protection of the beneficiary's  
8 child from aging out under the Child Status Protection Act (CSPA).  
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11       6. Under the filing date established in the October 2015 Visa Bulletin, visa  
12 availability is no longer defined by when visas can actually be issued to the  
13 beneficiary. The October 2015 Visa Bulletin instead views visa availability more  
14 broadly as “dates for filing visa applications within a time frame justifying  
15 immediate action in the application process.” The United States Citizenship and  
16 Immigration Services (USCIS) announcement relating to the October 2015 Visa  
17 Bulletin, available at [http://www.uscis.gov/news/uscis-announces-revised-](http://www.uscis.gov/news/uscis-announces-revised-procedures-determining-visa-availability-applicants-waiting-file-adjustment-status)  
18 [procedures-determining-visa-availability-applicants-waiting-file-adjustment-status,](http://www.uscis.gov/news/uscis-announces-revised-procedures-determining-visa-availability-applicants-waiting-file-adjustment-status)  
19  
20 also expansively interprets visa availability as “eligible applicants” who “are able to  
21 take one of the final steps in the process of becoming U.S. permanent  
22 residents.” These DOS and USCIS announcements provide more flexibility for the  
23 DOS to move the filing dates forward, and possibly make them even current.  
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26       7. For purposes of establishing a filing date, visa availability under the  
27 expansive interpretation may be based on just one visa being saved in the  
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1 backlogged preference category, such as the India employment-based third  
2 preference (EB-3), like the proverbial Thanksgiving turkey. Just like one turkey  
3 every Thanksgiving Day is pardoned by the President and not consumed, similarly  
4 one visa can also be left intact rather than used by the foreign national  
5 beneficiary. So long as there is one visa kept available, it would provide the legal  
6 basis for an I-485 filing through the earlier filing date, and this would be consistent  
7 with INA section 245(a)(3) as well as 8 C.F.R section 245.1(g)(1). Filing dates could  
8 potentially advance and become current. Therefore, there was no legal basis to  
9 retrogress the priority dates in the revised October 2015 Visa Bulletin. Rather the  
10 government could have advanced them.  
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13 8. It is my opinion that the new filing date system established in the October  
14 2015 Visa Bulletin allows for the filing of an I-485 application without regard to  
15 whether visas can actually be issued. On October 1, 2015, which is the start of the  
16 new fiscal year, visas will be made available in each of the preferences as statutorily  
17 prescribed, as well as to the countries within each of the preferences. It is  
18 acknowledged that there will be more foreign national applicants needing the visas  
19 than the visas that will be made available for the fiscal year. However, the filing  
20 date ought to be established based on the fact that there is a visa available in the  
21 preference category.  
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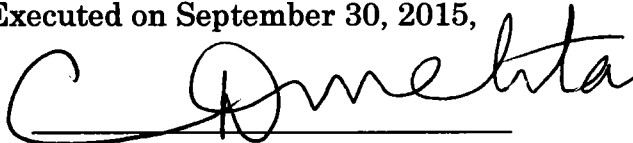
25 9. Even if the government claims that it miscalculated the number of visas  
26 actually available regarding the filing date so as to justify moving the filing dates  
27 backwards, a filing date under the October 2015 Visa Bulletin can be established  
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1 without regard to whether visas can actually be issued to an applicant. All that is  
2 needed is that a single visa should be potentially available for purposes of  
3 establishing the filing date. Accordingly, the DOS and the USCIS can and should  
4 leave intact the filing dates that were announced in the first version of the October  
5 2015 Visa Bulletin, notwithstanding any supposed calculation.  
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7 10. It is my considered opinion, based upon years of experience and scholarship  
8 in this area and the publications cited above, that the path DOS took in rescinding  
9 the Visa Bulletin and substituting new cut-off filing dates causes unnecessary and  
10 irreparable harm to immigrant visa applicants without any rational legal or  
11 practical justification.  
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13 Verification

14 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the  
15 foregoing is true and correct. Executed on September 30, 2015,  
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18 Cyrus Mehta  
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